

New Virginia Supreme Court justice selected

by Jayna Genti
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After a long nine-month process, the Virginia House of Delegates and Senate finally agreed on a candidate to fill the vacancy left by Justice LeRoy F. Millette, Jr.'s retirement from the Virginia Supreme Court last July. On March 10, 2016, a majority of both houses of the Virginia General Assembly selected Court of Appeals Judge Stephen R. McCullough to fill the opening on the high court. The choice of Justice McCullough ended a long power struggle over a new justice between the Republican-controlled Virginia Legislature and Governor Terry McAuliffe, a Democrat. Justice McCullough was considered by many political pundits to be a surprise choice, but one that would satisfy both sides in what had become a political standoff.

Introducing Justice Stephen R. McCullough

Justice McCullough was elected to his first judgeship by the Virginia General Assembly in July 2011, when he was chosen to serve an eight-year term on the Virginia Court of Appeals. Already very familiar with the workings of the Virginia court system and the Virginia Supreme Court, he began his legal career in 1997 as a clerk to Virginia Supreme Court Justice Leroy R. Hassell, Sr. Justice Hassell was the first African-American chief justice of the Virginia Supreme Court, and he was lauded for his work to launch a commission that helped modernize Virginia's mental health care system.

Justice McCullough graduated from the University of Virginia in 1994 with high distinction, Phi Beta Kappa. He attended the T.C. Williams School of Law, from which he graduated with honors in 1997. Before being elected to the court of appeals, he joined the Office of the Attorney General (AG) in 1999. In that position, he served in the criminal

litigation section, handling criminal appeals and postconviction cases at both the trial and the appellate court levels.

In 2006, AG Robert F. McDonnell named Judge McCullough deputy solicitor general. In that role, he litigated cases before the U.S. Supreme Court and defended Virginia statutes and regulations against constitutional challenges. He later served as Virginia's solicitor general under AG William C. Mims and as senior appellate counsel and opinions counsel under AG Ken Cuccinelli, handling criminal appeals and conducting and supervising the legal research for the AG's official legal opinions.

In 2010 and in 2011, McCullough was awarded two Best Brief awards by the National Association of Attorneys General for "excellence in written advocacy" for briefs he wrote in cases before the U.S. Supreme Court.

New justice's legal philosophy

Before the final vote electing McCullough to the Virginia Supreme Court for a 12-year term, Virginia House of Delegates Speaker William J. Howell issued a statement in which he noted, "Judge McCullough has served Virginia with distinction for over 19 years. He is an experienced appellate judge, who has previously been endorsed for the Supreme Court by every major bar association. Prior to his election to the Court of Appeals, he served in the [AG]'s office as the Solicitor General and as an Assistant Attorney General. He is a steady and consistent jurist who will apply the law as it is written."

During an interview with the House Courts of Justice Committee, McCullough expressed his deep respect for the supreme court and Virginia's "constitutional heritage of freedom." He noted, "The buck stops with the Supreme Court, in no small

part, in preserving that heritage." Justice McCullough also generally agrees with the conservative judicial approach to constitutional interpretation of the late U.S. Supreme Court Justice Antonin Scalia and would look to the original meaning of the legal text, while not being "hemmed in."

"You have to be willing to discard bad precedent," Justice McCullough acknowledged, pointing to the U.S. Supreme Court's 1896 decision in *Plessy v. Ferguson* upholding racial segregation in public facilities, which was later overturned by the landmark 1954 decision in *Brown v. Board of Education*.

New court of appeals judge

The elevation of Justice McCullough to the Virginia Supreme Court left a vacancy on the court of appeals. That vacancy will be filled by Henrico County General District Court Judge Mary Malveaux. The Virginia General Assembly elected Judge Malveaux to the court of appeals position the day after it named McCullough the newest justice on the Virginia Supreme Court. The senate voted 40-0 and the house of delegates voted 98-0 to elect Judge Malveaux to the court of appeals.

Judge Malveaux was the first African-American woman to serve full-time on the Henrico County District Court and has presided as its chief judge. In electing her to the court of appeals, state legislators praised Judge Malveaux for her breadth of legal experience, which includes stints representing both sides in criminal law and complex civil litigation matters.

Implications for employers

From the standpoint of employers, the selection of Justice McCullough for the Virginia Supreme Court can be viewed as an excellent choice. The Virginia Supreme Court is not known for being an activist court, but one that respects tradition and settled principles of law. Justice McCullough's background and legal philosophy indicate that he will chart a course consistent with that tradition of judicial conservatism.

Judge Malveaux's selection to the Virginia Court of Appeals also should prove to be an excellent choice. She has a strong background given her tenure as the chief judge of the District Court of Henrico County, which includes the city of Richmond. Her experience in both criminal and civil matters should put her in good stead on the court of appeals, which handles criminal appeals as well as the workers' compensation appeals that are frequently discussed in our "Case Tracker" feature.

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